14; *Smith* v. *Cattel,* 2 Wils. K. B. 376. This doctrine is followed to some extent in the United States, *Potts* v. *Imlay,* 4 N. J. Law *330; *Mayer* v. *Walter,* 64 Pa. St. 283, 289; *Ely* v. *Davis,* 111 N. C. 24. The theory of these cases is that the costs afford full indemnity to the successful defendant, that otherwise litigation might be interminable, and that the plaintiff is given no remedy when the defendant interposes a groundless defence. The contrary doctrine is to the effect that special damages, such as arrest of the person or seizure of the property of the former defendant, need not be shown, *Kolka* v. *Jones,* 6. N. D. 461; *Whipple* v. *Fuller,* 11 Conn. 582; *Eastin* v. *Bank of Stockton,* 66 Calif. 123; *McCardle* v. *McGinley,* 86 Ind. 538; *McCormick Harvesting Machine Co.* v. *Willan,* 63 Neb. 391. This is thought to be the modern tendency, see 16 MICH. LAW REV. 457, and note to *McCormick Harvesting Machine Co.* v. *Willan* (*supra*), 93 Am. St. Rep. 449, 466. The question was before the Alabama court for the first time. In following what they also deemed the modern tendency, the court said that the costs under modern statutes, which differ from the Statute of Marlbridge in that they make no extra allowance for damages in cases maliciously prosecuted, were inadequate and could not compensate for the necessary and reasonable expenses to which the defendant is usually put, nor make good an injury to reputation suffered by reason of the plaintiff's malicious allegations. Further, that experience has shown that litigation has not been interminable as a result of this doctrine. It is always a question of whether the party instituting the previous malicious suit was sufficiently punished by having costs assessed against him when he lost it.

NEGLIGENCE—DUTY TO USE CARE—VOLUNTARY UNDERTAKING.—D invited P to ride gratuitously with him in his automobile and due to D's negligence in crossing a railroad track, though warned by P of an approaching train, the car was struck, P sustaining serious injuries. *Held,* that P could recover therefor. *Avery* v. *Thompson* (Me., 1918), 103 Atl. 4.

The sole question involved in the instant case is the measure of care which an invitor for social purposes owes to his invitee. The conflicting answers which the courts have given to this query are represented by two recently decided cases. This divergence of the authorities finds expression in the diverse solution of the more fundamental problem as to whether or not there are degrees of negligence. The Massachusetts courts, which have uniformly enunciated the doctrine that such do exist, hold the invitor liable only for gross negligence. Thus in *Massaletti* v. *Fitzroy,* 118 N. E. 168, it was held that D was not liable for injuries which P, his invitee, sustained in an accident that was due solely to D's negligence, which was not gross. In accord with this view are *West* v. *Poor,* 196 Mass. 183; *Moffatt* v. *Bateman,* L. R. 3 P. C. 115, semble. But the other view, that of the instant case, seems to be supported by the large majority of the cases. *Pigeon* v. *Lane,* 80 Conn. 37; *Patnode* v. *Foote,* 138 N. Y. Supp. 221; *Beard* v. *Klusmeier,* 158 Ky. 153; *Fitzjarrell* v. *Boyd,* 123 Md. 497; *Siegrist* v. *Arnot,* 10 Mo. App. 197. In the last case Judge Thompson says that "the governing principle here is, that whenever a person undertakes an employment which

requires care and skill, whether he takes it for reward or gratuitously, a failure to exercise the measure of care and skill appropriate to such employment is culpable negligence, and if damages result therefrom an action will lie." Such a doctrine as this indicates that under some circumstances the invitor would be bound to exercise a high degree of care. It means that the invitee can recover for any injuries due to the active negligence of the invitor.

PERPETUITY—LEASE NOT TO COMMENCE WITHIN TWENTY-ONE YEARS—VALIDITY—INTERESSE TERMINI.—The plaintiffs were in possession of a beer house under a lease for fifty years, granted in 1896. The reversioner in fee granted a lease, dated March 25, 1917, of the premises to the plaintiffs, commencing immediately upon the expiration of the first lease. *Held*, the lease is not void as offending the rule against perpetuities. *Mann, Crossman & Paulin Lim* v. *Land Registrar*, 87 L. J. Ch. 81.

The question here is whether the *interesse termini* which undoubtedly the tenant *in futuro* takes is a vested, executory or contingent interest. If it is vested it does not come within the rule of perpetuities. If it is executory or contingent it does. There is no objection on the ground of remoteness to a gift to unborn children for life and then to an ascertained person provided the vesting of the estate in the latter is not postponed too long. *Loring* v. *Blake*, 98 Mass. 253; *Evans* v. *Walker*, 3 Ch. D. 211; *In re Roberts*, 19 Ch. D. 520. The instant case has never been expressly decided by the English Courts. In *Redington* v. *Brown*, 32 Ir. L. R. 347, however, it was decided that such an agreement creates a vested interest. In *Gillard* v. *Cheshire Lines Committee*, 32 W. R. 943, the plaintiff who had agreed to take a theatre for eight weeks to commence at a future time was allowed to maintain an action, for injury to a vested proprietary right, against the defendant who had made excavations and deprived the theatre of the support of the adjacent land. A bequest to an unmarried daughter for life and then to her children for their lives and then to a certain religious corporation vests an absolute estate or interest in the corporation subject to the preceding life estates. *Seaver* v. *Fitzgerald*, 141 Mass. 401. The text books are divided as to the validity of a lease such as the one in question. Speaking generally the older text books regard it as bad and the modern ones as valid. In Preston on Estates, Vol. I., p. 66, it is said that the holder of such an interest has not a vested interest because he has not any seisin or in other words such present right as will enable him to exercise an immediate act of ownership by alienation. An *interesse termini* has always been alienable and executory interests have been made alienable by statute, so the whole reason disappears. A situation closely analogous to the present case is that of a covenant by the lessor for the perpetual renewal of a lease. A covenant for renewal for successive lives to be nominated by lessees does not violate the law against perpetuities. *Pollock* v. *Booth*, 91 R. R. Eq. 229. Such a covenant is an exception to the rule. *Woodall* v. *Clifton* (1905), 2 Ch. 257. In a large number of states of the United States the rule of perpetuities is two lives in being and infancy of the person to take. If a case like the instant